

**UNITED STATES DISTRICT COURT  
DISTRICT OF MASSACHUSETTS**

IN RE: NEW ENGLAND COMPOUNDING	)	
PHARMACY, INC. PRODUCTS LIABILITY	)	
LITIGATION	)	
	)	MDL No. 2419
	)	Master Dkt. 1:13-md-02419-RWZ
THIS DOCUMENT RELATES TO:	)	
All Actions	)	
	)	

**JOINT MOTION FOR CONTINUANCE OF DISCOVERY DEADLINES  
APPLICABLE TO CASES NAMING PREMIER ORTHOPAEDIC AND SPORTS  
MEDICINE ASSOCIATES OF SOUTHERN NEW JERSEY, LLC AND  
MEMORANDUM OF LAW IN SUPPORT**

The Plaintiffs’ Steering Committee (“PSC”) and Premier Orthopaedic and Sports Medicine Associate of Southern New Jersey, LLC (“Premier”) file the following Joint Motion and Memorandum of Law in Support and state:

The PSC and Premier file this Motion to amend MDL Order # 9 and the deadlines set forth in Judge Zobel’s July 9, 2015 Order, to extend certain deadlines for common issue fact discovery, and to extend deadlines related to expert disclosures so that certain deadlines applicable to the cases involving Box Hill Surgery Center, LLC, Ritu T. Bhambhani, M.D., and Ritu T. Bhambhani, M.D., LLC (the ‘Box Hill Defendants’) shall likewise apply to Premier cases.

In the Court’s July 9, 2015 Order at Section II, in the section titled “Other Large Defendants” the close of common fact discovery as to Premier was November 15, 2015. As to the Box Hill Defendants, common fact discovery closes January 22, 2016. While common fact discovery deadlines were set on different dates, in that same section of the Order, the Court noted that the “Premier and Box Hill Common Expert Discovery”

(together) deadlines were “To be determined after close of fact discovery.” (Order at Page 3).

The PSC and Premier request that the Court extend common fact discovery until January 22, 2016. In granting this extension, PSC members and other Plaintiffs’ lawyers litigating on two fronts (Premier and Box Hill) will be able to work with separate Defendants to coordinate depositions of witnesses in a uniform manner. To date, the parties to this Motion have worked to exchange thousands of pages of documents, have taken depositions of Premier employees and non-parties, attended more than one dozen depositions, and have addressed production requests directed to at least one settling Defendant. Such request has not yet resulted in production.

WHEREFORE, the PSC and Premier request that the common issue fact discovery deadline, as set forth in Judge Zobel’s July 9, 2015 Order, be extended until January 22, 2016.

**MEMORANDUM IN SUPPORT OF JOINT MOTION FOR CONTINUANCE OF  
COMMON ISSUE FACT DISCOVERY**

On October 7, 2015, the Court entered a MEMORANDUM OF OPINION regarding, among other things, setting a schedule and procedure for bellwether trials in Tennessee. In that Opinion the Court invited parties from other jurisdictions to move for a similar schedule. Candidly, the New Jersey parties are not quite there. The litigation involving Premier has discovery issues pending, including at least one that relates to a Settling Defendant.

For Plaintiffs, certain documents to be produced may be relevant to depositions yet to be taken. Counsel for the moving parties is tentatively holding the date of December 29, 2015 for the deposition of Thomas Dwyer, M.D. Dr. Dwyer is an officer

of Premier, and his deposition is critical to the prosecution of this case. Other depositions will follow.

This Court has broad discretion to manage scheduling and discovery. *See United States v. 29,540.00 in United States Currency*, 2013 U.S. Dist. LEXIS 9735, \*15 (D. Mass. Jan. 24, 2013). A scheduling order may be modified with the judge's consent. *See* Fed. R. Civ. P. 16(b)(4); *Girl Scouts of the USA*, et al., 383 F.3d 7, 12 (1st Cir. 2014). Good cause exists where a deadline "may not reasonably be met, despite the diligence of the party seeking the extension." *See House of Clean, Inc. v. St. Paul Fire & Marine Ins. Co.*, 775 F. Supp. 2d 296, 298 (D. Mass. 2011) (citing *Tele-Connections, Inc. v. Perception Tech. Corp.*, Civ. A. No. 88-2365-S, 1990 WL 180707, at \*1 (D. Mass. Nov. 5, 1990)).

No trial dates have been set. Depositions must be scheduled, and taken only one time, with all documents and other evidence in hand. Unlike the parallel Tennessee litigation, there is a smaller universe of cases as to Premier (and potentially Box Hill).

The parties stipulate that there will not be any prejudice in the pending cases as to the Premier Defendants.

### **CONCLUSION**

For the reasons stated herein, the parties respectfully request that the Court amend the noted Order and extend discovery as requested.

Dated: December 1, 2015

Respectfully submitted,

/s/ O. Mark Zamora

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**CERTIFICATE OF SERVICE**

I, O. Mark Zamora, certify that I caused a copy of the above Motion and Memorandum to be filed electronically via the Court's electronic filing system. Those attorneys who are registered with the Court's electronic filing system may access these filings through the Court's system, and notice of these filings will be sent to these parties by operation of the Court's electronic filing system.

Dated: December 1, 2015

/s/ O. Mark Zamora  
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